

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>92-11035</u>
CAROL MILES, JR.)	
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Debtor)	
)	
)	
)	
CAROL MILES, JR.)	
)	
Movant)	
)	
vs.)	
)	
FIRST FAMILY FINANCIAL)	
SERVICES OF GEORGIA, INC.)	
)	
Respondent)	

ORDER

Before the court are debtor's motion to avoid the lien of First Family Financial Services of Georgia, Inc. ("First Family") and First Family's motion for relief from the automatic stay, 11 U.S.C. §362(a). Based on the evidence presented at hearing and relevant legal authorities, I make the following findings.

FINDINGS OF FACT

On March 27, 1991 First Family loaned Carol Miles, Jr., the debtor, Four Thousand Five Hundred Fifty-Four and 81/100 (\$4,554.81) Dollars. Debtor granted First Family a nonpurchase

money, nonpossessory security interest in the following items of personal property to secure the loan: (1) RCA color television set; (1) Synphone video cassette recorder; (1) component stereo system with Pioneer amplifier, Pioneer cassette player, JVC 5 turntable, and Morris speakers; and (1) 8' x 12' Americana storage building. With his motion, debtor seeks to avoid First Family's lien on these items of debtor's personal property. First Family contests debtor's motion only as it pertains to the storage building, contending the automatic stay, 11 U.S.C. §362(a), should be modified pursuant to §362(d) to permit foreclosure of its security interest in the storage building.¹ Debtor's counsel conceded at hearing that if First Family's lien on the storage building is not avoidable, there is no basis for denying First Family relief from the automatic stay.

Debtor states in his motion that all of the abovementioned items of personal property have been claimed as fully exempt. Schedule C of debtor's petition, however, indicates that the current value of the storage building without deducting any exemption is Four Hundred and No/100 (\$400.00) Dollars and that the value of the claimed exemption is zero (\$0) Dollars. Debtor testified at hearing that the storage building has a fair market

value of Eight Hundred and No/100 (\$800.00) Dollars. The building, which is located in debtor's backyard, is used to store debtor's household items.

CONCLUSIONS OF LAW

The Bankruptcy Code permits the debtor to

avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled to under subsection (b) of this section [522], if such lien is -- .

¹Although First Family's motion lists some of the other items of personal property as collateral upon which it seeks to foreclose its security interest, First Family stipulated at hearing that its lien on these items is avoidable.

. . .

(2) a nonpossessory, nonpurchase-money security interest in any -

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor

11 U.S.C. §522(f).

The parties stipulate that First Family's security interest is a nonpossessory, nonpurchase money security interest. Under §522(f), whether a lien based on a nonpossessory, nonpurchase money security interest can be avoided involves a two-step inquiry: first, there must be an available exemption; and second, the lien must actually impair the exemption.

Pursuant to 11 U.S.C. §522(b), Georgia has opted out of the federal scheme of exemptions, see, Official Code of Georgia Annotated (O.C.G.A.) §44-13-100(b), providing its own list of exempt

property in O.C.G.A. §44-13-100(a). Georgia law, therefore, determines whether the subject property is "exempt" for purposes of 11 U.S.C. §522(f). Relative to debtor's motion, Georgia law provides:

(a) . . . [A]ny debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property:

(1) The debtor's aggregate interest, not to exceed \$5,000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor;

. . . .

(4) The debtor's interest, not to exceed \$200.00 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. The exemption of the debtor's

interest in the items contained in this paragraph shall not exceed \$3,500.00 in total value;

. . . .

(6) The debtor's aggregate interest, not to exceed \$400.00 in value plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property. . . .

O.C.G.A. §44-13-100(a). Debtor maintains that the storage building is a "household good," exemptible under O.C.G.A. §44-13-100(a)(4). First Family bears the burden to prove the exemption is not properly claimed. Bankruptcy Rule 4003(c).

There is no Georgia case law interpreting the phrase "household goods," as used in O.C.G.A. §44-13-100(a)(4). I have previously defined "household goods" for purposes of O.C.G.A. 44-13100(a)(4) as "items of tangible personal property held primarily for personal or family use by the debtor or a dependent of the debtor in or about the household, excepting therefrom items held for investment purposes or items having a pecuniary value independent of its functional use." *Plummer v. Massey-Ferguson Credit Corp.* (In re: Plummer), Ch. 7 Case No. 387-00162 slip op. at 16-17 (Bankr. S.D. Ga. Dalis, J., July 1, 1988). Debtor's storage building is a "household good" as defined in Plummer. Thus, debtor would be entitled to exempt Two Hundred and No/100 (\$200.00) Dollars of the value of the storage building pursuant to O.C.G.A. §44-13-100(a)(4) and the balance of the property's value pursuant to O.C.G.A. §44-13100(a)(1) and (a)(6)2; however, contrary to debtor's motion, debtor did not claim an exemption for his storage building in his schedule of exemptions. Under 11 U.S.C. §541(a), debtor having failed to claim the exemption, the storage building remains property of the bankruptcy estate. See, In re: Thacker, 5 B.R. 592, 593-94 (Bankr. W.D. Va. 1980). Therefore, First Family's lien may not be avoided pursuant to 11 U.S.C. §522(f).

It is therefore ORDERED that debtor's motion to avoid the lien of First Family Financial Services of Georgia, Inc. on the storage building is denied;

further ORDERED that the motion for relief from stay filed by First Family Financial Services of Georgia, Inc. is granted.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 5th day of December, 1992.